

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JULIA HEAVERN, et al.

Plaintiffs,

v.

MARRIOTT INTERNATIONAL, INC.  
and ZURICH NORTH AMERICA,

Defendants.

CIVIL ACTION NO.: 05-11170- MEL

THE DEFENDANT, ZURICH NORTH AMERICA'S  
MOTION FOR SUMMARY JUDGMENT

The Defendant, Zurich American Insurance Company incorrectly identified as Zurich North America ("Zurich"), moves pursuant to Fed. R. Civ. P. 56(c) for summary judgment in its favor as to Count VI ("Violation of M.G.L. c. 93A and M.G.L. c. 176D, Section 3(9)(f)") of the Plaintiffs' Complaint, of the Plaintiffs' Complaint, the only Count asserted against Zurich.

Zurich is entitled to summary judgment as a matter of law on Count VI of the Complaint, and should be dismissed from this case, because:

(1) the Plaintiffs are barred from asserting claims against Zurich pursuant to M.G.L. c 93A because the written settlement demands that were sent to Zurich were not proper demands and failed to satisfy the requirements of M.G.L. c. 93A;

(2) Zurich did not violate M.G.L. c. 176D by not making a settlement offer to the Plaintiffs because liability and damages in this case are not reasonably clear; and

(3) the Plaintiffs suffered no injury or damages as a result of Zurich's failure to respond to the written demands dated June 21, 2004.

In the alternative, Zurich requests that Count VI of the Complaint asserting claims under Chapter 93A/176D against Zurich be severed and stayed until such time as the Plaintiffs' claims against the Defendant, Capitol Hotel Company f/k/a Marriott International Inc. are resolved. The Plaintiffs cannot maintain their Chapter 93A/176D action against Zurich unless its insured is found liable to the Plaintiffs.

In support of this Motion, Zurich submits a Memorandum of Law as to which there exists no genuine issue to be tried.

**WHEREFORE**, Zurich requests that this Court:

- (1) enter summary judgment against the Plaintiffs and in favor of Zurich as to Count VI of the Plaintiffs' Complaint;
- (2) dismiss Zurich from this case;
- (3) in the alternative, sever and stay Count VI for violation of Chapter 93A/176D against Zurich; and
- (4) grant such other and further relief as this Court deems appropriate.

**ZURICH REQUESTS ORAL ARGUMENT**

**ZURICH AMERICAN INSURANCE COMPANY,**  
By its Attorneys,




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**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of August, 2005, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to counsel of record:

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